IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

Crl.MC.No. 2420 of 2007()

C.C.NO.434/07 OF THE JFCM COURT, MAVELIKKARA.

PETITIONER:

SYAM KUMAR, AGED 36 YEARS,
S/O.SURENDRAN, KUNCHIRA VAYALIL,
KANNAMANGALAM MURI, MAVELIKKARA TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.R.PADMAKUMAR

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No.2420 OF 2007

Dated this the 3rd day of August, 2007

ORDER

The petitioner along with his wife faces indictment in a prosecution for offences punishable, inter alia, under Sec.420 of the IPC. The alleged incident took place in 2000. The petitioner was not available for trial. The case against the wife of the petitioner was proceeded with. The case against the petitioner was split up as he was employed abroad and was not available. The wife of the petitioner was found not guilty and acquitted. Long later, the petitioner surrendered before the learned Magistrate. The case now stands posted to 23/10/07.

2. The petitioner has now come to this Court with the grievance that the learned Magistrate has not posted the case for trial immediately and has posted the same to too long date. It is submitted that in the light of Annexure-A1 judgment of acquittal of the petitioner's wife and the deposition tendered

by the complainant, the learned Magistrate must have taken up the matter for consideration expeditiously. The petitioner hopes that he will be entitled to secure discharge under Sec.239 of the Cr.P.C. It is prayed that the learned Magistrate may be directed to consider the plea for discharge under Sec.239 of the Cr.P.C. expeditiously. It is further prayed that in case the petitioner is not discharged, the trial may be directed to be completed expeditiously. The petitioner is employed abroad and does not have leave which enables him to remain in India until the trial takes place after 23/10/07.

3. I find that the plight of the petitioner deserves sympathy. But it is certainly for the petitioner to move the learned Magistrate for expeditiously disposal. Without and before moving the learned Magistrate, the petitioner has chosen to come to this Court. While I agree that the petitioner's plea for discharge, at least, must be considered immediately, I take the view that the petitioner must certainly move the learned Magistrate and cannot expect this Court to fix the schedule of the proceedings before the trial court.

4. This Crl.M.C. is, in these circumstances, dismissed; but with the specific observation that the petitioner shall be at liberty to move the learned Magistrate for an expeditious

disposal of the case and the learned Magistrate must proceed forthwith to consider the plea for discharge. The petitioner's application for exemption, if the charge is framed, till the trial is taken up, must also be considered by the learned Magistrate in accordance with law and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge